

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WESTMINSTER SCHOOL DISTRICT.

OAH CASE NO. 2011090307

ORDER DENYING MOTION FOR
STAY PUT

On September 15, 2011, Student filed a motion for stay put. On September 21, 2011, the Westminster School District (District) filed an opposition on the ground that the requested placement by Student is not the current educational placement provided in the Student's last agreed upon and implemented individualized education program (IEP).

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a)(2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *Zvi D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's last IEP that has been agreed upon and implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

California Code of Regulations, title 5, section 3042, defines "educational placement" as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP.

Under stay put, "it is not intended that a child with disabilities remain in a specific grade or class pending appeal if he or she would be eligible to proceed to the next grade and the corresponding classroom within that grade." (Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514.) In most instances, progression to the next grade adheres to the status quo for purposes of stay put. (See *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d

532, 534.) Notably, in *Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, the Court explained as follows:

Courts have recognized, however, that because of changing circumstances the status quo cannot always be exactly replicated for the purposes of stay put. *Ms. S. ex rel. G. v. Vashon Island School District*, 337 F.3d 1115, 1133-35 (9th Cir. 2003). In the present case, the circumstances have changed because [the student] has moved from kindergarten into first grade, which includes additional time in the classroom. Certainly the purpose of the stay-put provision is not that students will be kept in the same grade during the pendency of the dispute. The stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances.

(*Van Scoy, supra*, 353 F.Supp.2d at p. 1086.)

Thus, progression to the next grade, or as in this instant case matriculation from an elementary school to a middle school, maintains the status quo for purposes of stay put. (See also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability].)

DISCUSSION

Typically, a special education student is entitled to remain in his or her current educational placement until due process hearing procedures are complete, unless the parties agree otherwise. Therefore, for purposes of stay put, the current educational placement is typically the placement called for in the student's IEP that has been implemented prior to the dispute arising. However, the stay put right of a student is not violated when, as in the instant case, the student is required to change placement or school location due to advancement of the student to next grade, or matriculation to a middle school placement from the elementary school placement.

In this case, both parties agree that the last agreed upon and implemented IEP for Student is the February 4, 2011 IEP. That IEP provided for Student to be placed in a special day SUCSESS (Systematic Utilization of Comprehensive Strategies for Ensuring Student Success) program, which was located at the Sequoia Elementary School. Parent consented to that IEP offer and signed the IEP document. Based on the records provided by the parties, the February 4, 2011 IEP was implemented through the end of Student's fifth grade elementary school education during the school year (SY) 2010-2011. Further, the record shows that Student has participated in the SUCSESS program since the school year (SY) 2005-2006.

Since the development of the agreed upon and implemented February 4, 2011 IEP however, Student has matriculated from his SUCSESS elementary school placement at

Sequoia Elementary School. The record shows that while the February 4, 2011 IEP team attempted to address Student's middle school placement and services, the IEP team was not able to agree on Student's middle school placement, as Parent was yet to observe alternative school placements for Student. In the IEP document, the IEP team noted that Student would be placed in a "SUCSESS-type structured classroom program" for his middle school. Following the February 4, 2011, the IEP team again met on May 13, 2011 in order to determine Student's middle school placement, but an agreement could not be reached regarding Student's middle school placement and the SUCSESS program.

As discussed above, absent an exception, stay put does not prevent the normal matriculation of a student from grade to grade, or from an elementary school placement to a middle school placement. Thus, the stay-put provision entitles a student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances, or as in the instant case, Student's matriculation to middle school.

Based on the information provided, the SUCSESS program is a specialized program taught by special education teachers with moderate-to-severe teaching credentials, in a special day class setting. The SUCSESS program offers specialized academic instruction, highly structured educational setting and individualized curriculum. It has an adult-to-student ratio of as low as one adult to two students. The teachers in the SUCSESS program receive specialized trainings. Through declarations filed by District, it has established that it has one SUCSESS middle school program, which is located at Johnson Middle School. According to the declarants, the SUCSESS classroom at Johnson Middle School is comparable to Student's SUCSESS classroom at Sequoia Elementary School where Student matriculated from during the SY 2010/2011.

In this case, because Student has matriculated from his elementary school placement, and because there is a current dispute as to Student's placement, District must implement Student's last agreed to and implemented IEP. Because Student has not challenged his matriculation into middle school, his stay put must be implemented in a middle school rather than at his prior elementary school placement. To meet the stay put requirement, Student's middle school placement must, as closely as possible, replicates the SUCSESS placement that existed at the time the dispute arose.

Student requests that his stay put placement be implemented at Warner Middle School. However, he fails to establish that the SUCSESS program could be replicated at Warner Middle School. Therefore, Student's motion for placement in a middle school program at Warner Middle School, or any other program other than the SUCSESS program, during the pendency of this dispute, is not supported by the law. Accordingly, Student's motion for stay put as to Warner Middle School is denied.

ORDER

Student's motion for stay put is denied.

Dated: September 26, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings